1 HONORABLE ROBERT J. BRYAN 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 8 AT TACOMA 9 JOHN W. RATKO and LAVERNE RATKO, Case No. C11-5015RJB 10 husband and wife, and their marital community, STIPULATION OF COUNSEL AND 11 Petitioner. STIPULATED ORDER OF DISMISSAL 12 **NOTED ON MOTION CALENDAR: January** v. 28, 2011 13 LEWIS COUNTY, a Washington Municipal WITHOUT ORAL ARGUMENT Corporation, 14 Respondent. 15 16 17 **STIPULATION** 18 Jane Koler from the Law Office of Jane Ryan Koler, PLLC who represents the Plaintiffs in 19 this matter, Mr. and Mrs. Ratko, and David Fine, Deputy Prosecutor, representing Lewis County a 20 21 Washington Municipal Corporation enter into the following stipulation. 22 1. The parties agree that the Plaintiffs, Mr. and Mrs. Ratko, can take a voluntary non-suit 23 on their Section 1983 claim which was based on a taking of their property rights which is articulated 24 in Paragraph 4 of their Complaint. 25 2. The state law claims based on nuisance, trespass, and condemnation of a private way of 26 LAW OFFICE OF JANE RYAN KOLER, PLLC 5801 Soundview Drive, Suite 258

## 

| 1 necessity should be remanded to the Lewis County Superior Court.                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DATED this day of January, 2011.                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| A ANY OFFICE OF TANK BY ANY WOLFD BLAG                                                             | A FIXING GOLDATIA DE OGEGVERNAG                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| LAW OFFICE OF JANE RYAN KOLER, PLLC                                                                | LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Bv:                                                                                                | By:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Jane Koler, WSBA # 13541                                                                           | J. David Fine, WSBA #33362                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Auorney for Plaintiffs                                                                             | Civil Deputy Prosecuting Attorney of Attorneys for Respondent Lewis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                                                                                    | County                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| ORDER ORDER                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| NOW THEREFORE, based on the above stipulation of counsel it is ordered as follows:                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 13 1. The Plaintiffs' Section 1983 claim is dismissed without prejudice pursuant to FRCP 41(a)(2). |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| The Plaintiffs' claims based on state law nuisance, trespass and condemnation of a way of          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| necessity are remanded to the Lewis County Superior                                                | Court.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Entered this 26th day of January 2011                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Entered this 26 day of January, 2011.                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 18 Rabert Tonyan                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| ROBERT J. BRYAN United States District Judge                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Presented by:                                                                                      | J                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| LAW OFFICE OF JANE RYAN KOLER, PLLC                                                                | LEWIS COUNTY PROSECUTING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                    | ATTORNEY'S OFFICE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| By: <u>/s/</u> Jane Koler, WSBA # 13541                                                            | y: <u>/s /</u><br>J. David Fine, WSBA #33362                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Attorney for Plaintiffs                                                                            | Civil Deputy Prosecuting Attorney                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| · · · · · · · · · · · · · · · · · · ·                                                              | of Attorneys for Respondent Lewis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                                                                    | DATED this day of January, 2011.  LAW OFFICE OF JANE RYAN KOLER, PLLC  By: Jane Koler, WSBA # 13541    Attorney for Plaintiffs  ORDE  NOW THEREFORE, based on the above stipulation of 1. The Plaintiffs' Section 1983 claim is dismissed 2. The Plaintiffs' claims based on state law nuinecessity are remanded to the Lewis County Superior Entered this 26th day of January, 2011.  ROBERT J. BR United States Entered by:  LAW OFFICE OF JANE RYAN KOLER, PLLC  By: /s/ |

LAW OFFICE OF JANE RYAN KOLER, PLLC 5801 Soundview Drive, Suite 258 P.O. Box 2509 – Gig Harbor 98335 TEL 253-853-1806 • FAX 253-851-6225